IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 513 OF 2003

IN

EXECUTION APPLICATION NO. 573 OF 2001

IN

MANIPAL ARBITRATION PETITION NO. 15 OF 2000

Maharashtra Apex Corp. Ltd., .. Petitioners.

vs.

Prem Roller Flour Mills

Ltd., & Ors. .. Respondents.

And

Ispat Industries Ltd., .. Applicants.

Mr. A.R. Bamne for petitioner.

Mr. S. Shah with S.K. Jain and Ms. Savita Ranpise i/by S.K.Srivastav for Respondent.

CORAM : S.U.KAMDAR, J.

DATE : 15th MARCH, 2005.

P.C.

. The present chamber summons have been taken out for raising attachment in respect of movable properties lying in at Flat No. 141, Cuffe Parade, Persopolis Premises Co-op. Hsg. Society Ltd., Plot

No. 100, Cuffe Parade, Mumbai 400 005. By an order dated 21.7.2004 the matter was referred to the Commissioner so as to enable the applicant to establish the title in respect of the movable properties which have been attached pursuant to the attachment levied on 21.11.2001. Before the Commissioner one Mr. Sandeep Kadam has filed an affidavit of examination-in-chief inter alia claiming right in respect of the said movables. However, in paragraph 9 of the said affidavit in evidence he has categorically stated as under :-

> "The applicant company is not in possession of any receipts in respect of the said moveable articles as they are very old."

2. It is an admitted position before me that no documents of any nature whatsoever in respect of the movables indicating that the same belonged to the applicant company have been produced before the Commissioner for recording evidence. No documents to indicate that the company has paid any amount for the purchase of said movables has also been produced. In nut shell the company has failed to prove ownership or any title in respect of the said movables in evidence.

3. However, the learned counsel for the applicant has relied upon averments in paragraph 11

of the plaint which has been filed by the plaintiff against the defendant in Thane Court in which it has been inter alia averred as under :-

> "The Defendants have leased the property mentioned in the Agreement of Mortgage dated 23rd March, 1995 without the consent of the Plaintiff to Nippon Denro in the year, 1995, the said flat is situate at Cuffe Parade Persepolis Premises Co-operative Society Limited, Flat No. 141, Plot No. 100, Cuffe Parade Reclamation Bombay-400 005. The Plaintiff respectfully submit that the aforesaid flat is in the possession of the Nippon Denro since the year 1995."

4. The learned counsel for the applicant by relying upon the aforesaid averments contends that the fact that the applicant is in possession of the premises from 1995 having been established, it should be presumed that the applicant is the owner of the movable articles lying therein. I am not inclined to accept the aforesaid contention. The applicant was given an opportunity to establish the title in respect of the movable by leading necessary documents and /or oral evidence. Neither by oral evidence nor by any documentary evidence the applicant has been able to establish any title or establish any source of money spent on the said

movables. In the case of Janki Vashdeo Bhojwani and another vs. Indusind Bank Ltd, & Others, reported in (2005) 2 SCC 217, the Apex Court has held that for the purpose of resisting the execution of a decree by claiming title in respect of the property a person must show the source of funds from which he has acquired the said property. In the present case, having given an opportunity to do so by adducing relevant oral evidence before the Commissioner, the applicant has miserably failed to establish any such title. The contention of the applicant that the property belongs to the applicant must be accepted by inference due to the possession of the premises, cannot be accepted.

5. In view thereof, I do not find any substance in the present chamber summons and accordingly dismiss the same. However thee shall be no order as to costs.

6. The learned counsel appearing of the applicant seeks extension of the ad-interim order for the period of two weeks. In view of the fact that having failed to establish any title to the property, I do not find any reason to extend the ad-interim order in the present case. The application is, therefore, rejected.